

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 87-268

PETITION FOR PARTIAL RECONSIDERATION AND/OR CLARIFICATION

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FILE

National Capital Communications, Inc. ("NCCI"), by its attorney, hereby requests that the Commission clarify its Second Report and Order ("Order") herein, released May 8, 1992, or reconsider that Order to the extent necessary to address the status and eligibility for Advanced Television ("ATV") licenses of applicants for conventional television station construction permits whose applications are in conflict with license renewal applicants. In support thereof, NCCI states as follows:

I. Statement of Interest

NCCI is an applicant for a construction permit to operate a new commercial television station in Washington, D.C., on Channel 4. Its application was filed on September 3, 1991, and was timely filed vis-a-vis the renewal application of WRC-TV. NCCI's application was accepted for filing on December 13, 1991, and assigned file number BPCT-910903KF. The NCCI and WRC-TV applications have not yet been designated for hearing.

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II. The Second Report and Order Fails To
Consider Renewal Challengers In Its
ATV Application/Licensing Scheme

The Order herein, inter alia, establishes rules governing the eligibility for, and timing of, initial applications for ATV frequencies. Specifically, initial eligibility is limited to existing television "broadcasters," which the Order at ¶8 defines as full-service television licensees, permittees, and applicants whose applications were on file as of October 24, 1991, the adoption date of the Notice of Proposed Rule Making herein (6 FCC Rcd 7024). NCCI is thus eligible, as its application was on file before October 24, 1991.

The Order prescribes a two-year period for the filing of ATV applications by those initially eligible, measured from the date that the Commission adopts its Table of ATV Allotments. At footnote 24, it states that the Commission "will cease issuing new NTSC licenses once ATV assignments to existing broadcasters are made." At ¶12, it considers the case of an existing NTSC license being revoked, or not renewed, ruling that such action will automatically revoke, or render it ineligible for an ATV license.

At no point does the Order give specific consideration to the status of a renewal challenger under these rules. Accordingly, NCCI urges that the Commission clarify its rules to deal with this situation. Specifically, it suggests the following:

- o That a renewal challenger be permitted, during the two-year period following the adoption of an ATV Table of Allotments, to file a supplemental application for an ATV construction permit for the ATV channel "paired" with the NTSC channel which is the subject of its original application, such application to be deemed "contingent" upon the grant of the challenger's NTSC application, and not to be considered in the existing renewal proceedings;
- o That such contingent application not be deemed to be mutually exclusive with an ATV application for the "paired" channel filed by the incumbent licensee, and that the incumbent's ATV application be considered without regard to the challenger's contingent ATV application;
- o That the general rule whereby the Commission will not issue new NTSC authorizations after the award of ATV authorizations has commenced be inapplicable to timely-filed renewal challengers;
- o That, in the event that the challenger's underlying NTSC application is granted (and the incumbent's renewal application is denied), the challenger's ATV application will become non-contingent, and may be processed to grant. (If the renewal hearing is concluded with a grant to the challenger after the incumbent has constructed and commenced operation of its ATV facilities, the incumbent may be accorded special temporary authorization to continue its ATV

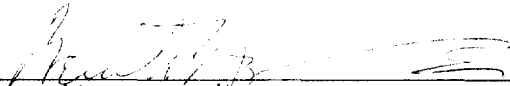
operation during such period as may be entailed in processing the challenger's ATV application.¹)

NCCI submits that the foregoing clarifications are consistent with the overarching principle of the instant proceeding; i.e., that ATV is an enhancement of an existing service, rather than a new video service. Pursuant to that principle, a successful NTSC renewal challenger should be permitted to succeed to the ATV rights (and obligations) of the displaced incumbent, with a minimum of administrative delay and, if possible, without service disruption.

Respectfully submitted,

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June 22, 1992

¹ The Commission's bar upon the independent assignment of the ATV authorization would not prevent the challenger and the incumbent from negotiating the former's purchase of the latter's ATV physical facilities.